

IN THE MATTER OF:
MANN BRACKEN, LLP,
Respondent.

*** BEFORE THE MARYLAND**
*** STATE COLLECTION AGENCY**
*** LICENSING BOARD IN THE**
*** OFFICE OF THE COMMISSIONER**
*** OF FINANCIAL REGULATION**

*** DFR-FY-2010-216**

* * * * *

CONSENT ORDER

This Consent Order is entered into this 10th day of August, 2010, by and between the Maryland State Collection Agency Licensing Board in the Office of the Commissioner of Financial Regulation (hereinafter the "Agency") and Mann Bracken, LLP, a Delaware limited liability partnership, the continuation by conversion of Mann Bracken, LLC, a Georgia limited liability company, the surviving entity of the merger of Mann Bracken, LLC (f/k/a Mann, Bracken, Layng & Knezo, LLC), Wolpoff & Abramson, LLP, and Eskanos & Adler, PC (hereinafter "Mann Bracken" or "Respondent"). The Agency and the Respondent ("the Parties") fully and knowingly agree to the entry of this Consent Order as a final resolution of this matter.

1. Pursuant to the Maryland Collection Agency Licensing Act (or "MCALA," at Business Regulations Article ("BR"), § 7-101 *et seq.*, Annotated Code of Maryland), the State Collection Agency Licensing Board in the Office of the Commissioner of Financial Agency is responsible for licensing and regulating persons engaged in collection agency activities in the State of Maryland (the "State").

2. At all times relevant to the facts set forth herein, Respondent Mann Bracken, located at Two Irvington Centre, 702 King Farm Boulevard, Rockville, Maryland, has been duly licensed under MCALA as a Maryland collection agency as that term is defined in BR § 7-101(c), holding several collection agency licenses, with Respondent's licenses including, but not limited to, License Numbers 04-4319 and 04-5306.

3. Pursuant to BR § 7-303(b), in order to be qualified for a license as a collection agency under MCALA, the person must satisfy the Agency of the following:

that the applicant is of good moral character and has sufficient financial responsibility, business experience, and general fitness to:

- (1) engage in business as a collection agency;
- (2) warrant the belief that the business will be conducted lawfully, honestly, fairly, and efficiently; and
- (3) command the confidence of the public.

4. Pursuant to BR § 7-308(a), the Agency can bring an action to suspend or revoke the license of a collection agency "if the licensee or any owner, director, officer, member, partner, or agent of the licensee" engages in various prohibited activities, including, among other things, the following: "(3) in connection with the collection of any consumer claim: . . . (ii) engages in any illegal or dishonest activities; or (4) knowingly or negligently violates the Maryland Consumer Debt Collection Act."

5. Thus the Agency has the authority to bring actions under MCALA against persons engaged in various prohibited activities in connection with the collection of any consumer claim, including for violations of the federal Fair Debt Collection Practices Act ("FDCPA," at 15 U.S.C. § 1692, *et seq.*) pursuant to BR § 7-308(a)(3)(ii) (by engaging in illegal activities), and for violations of the MCDCA pursuant to both BR § 7-308(a)(3)(ii) (by engaging in illegal activities) and BR § 7-308(a)(4) (by knowingly or negligently violating

the Maryland Consumer Debt Collection Act). Such authority extends both to litigation-related collection activities, as well as to non-litigation (i.e. “traditional”) collection activities.

6. The dissolution and winding up of a partnership is addressed in the Maryland Revised Uniform Partnership Act (at Corporations and Associations Article (“C&A”), § 9A-101 *et seq.*). Pursuant to C&A § 9A 803(a), “the circuit court for the county in which the principal office of the partnership is located, for good cause shown, may order judicial supervision of the winding up [of the partnership’s business].” In the present matter, the Respondent was placed under judicial supervision pursuant to an Order Appointing Receiver, issued by the Circuit Court for Montgomery County, Maryland on February 25, 2010 (at Attachment 1).

7. The authority of a receiver to wind up the affairs of a partnership is addressed in C&A § 9A-803(c), which provides, in relevant part, as follows: “[a] person winding up a partnership’s business may ... prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership’s business, ... and perform other necessary acts.” Further, pursuant to the Order Appointing Receiver noted above, the Receiver for the Respondent (hereinafter “the Receiver”) was given the power, among other things, to:

- (j) Participate in lawsuits and other actions where the Petitioner is a participant, to pay insurance deductibles with respect to lawsuits against the [*sic*] Petition, to employ counsel to defend such lawsuits or actions, to terminate existing counsel in such lawsuits or actions, to not defend such lawsuits or actions or to consent to judgment lawsuits or actions as the Receiver determines using her business judgment;
- (k) Execute and deliver, in the name of the receiver as

attorney-in-fact and agent of the Petition, such documents, instruments, applications and certificates as are necessary or appropriate to implement and effectuate the rights and powers set forth herein...

(l) Compromise any litigation to which the Petitioner is a party consistent with the purposes of maximizing the recovery for the Petitioner and maximizing distributions to the creditors of the Petitioner;

* * *

(t) Do any acts which the receiver in her sole discretion deems appropriate or desirable to protect the assets of the Petitioner and use such measures, legal or equitable, as the receiver may in its sole discretion deem appropriate or desirable to implement and effectuate the provisions hereof;

* * *

8. Based on the foregoing, the Receiver has the authority and responsibility to resolve the present administrative action against the Respondent and on the Respondent's behalf. As such, all references herein to the Respondent's admissions, considerations, actions, agreements, acknowledgments, and/or waivers are those of the Receiver made on the Respondent's behalf.

9. Respondent admits to the alleged violations (hereinafter "the violations") set forth in the Summary Order to Cease and Desist and Summary Suspension of Collection Agency Licenses issued by the Agency against the Respondent on January 11, 2010 (the "Summary Order," at Attachment 2), including, but not limited to, expressly admitting to the following:

a. that Respondent no longer satisfies the requirements to be licensed as a collection agency in Maryland pursuant to BR § 7-303(b), as its activities no longer demonstrate the financial responsibility or general fitness sufficient to engage in business as a collection agency or to warrant the belief that Respondent's business will be conducted

lawfully, honestly, fairly, and efficiently;

b. that the motions which Respondent filed in, and the correspondences which Respondent sent to, Maryland State courts in January 2010 constituted false or misleading representations and unfair practices in violation of 15 U.S.C. §§ 1692e and 1692f, respectively, of the FDCPA, and in violation of CL § 14-202(8) of the MCDCA;

c. that Respondent's inaccessibility to the public, to the Agency, to the courts, and to opposing parties and counsel after it ceased all business operations in late December 2009 meant that the Respondent was unable to properly respond to communications or to otherwise act in good faith towards Maryland residents, in violation of various provisions of the FDCPA, the MCDCA, and MCALA; and

d. that the above-referenced knowing and willful violations of MCALA, the MCDCA, and the FDCPA in connection with the collection of consumer claims, constitute grounds for revocation of the collection agency licenses of Respondent under BR §§ 7-308(a)(3)(ii), 7-308(a)(4), and 7-308(b) of MCALA, and would also subject Respondent to the imposition of fines and other non-monetary penalties under FI § 2-115(b) and to the imposition of fines, restitution, and other non-monetary penalties under MCALA.

10. Respondent wishes to resolve this matter without the need for an administrative hearing, thereby avoiding the costs associated with such hearing and any potential appeals, and therefore agrees to resolve this matter fully, finally, and completely without an administrative hearing as set forth in this Consent Order, and further accepts without condition, and fully agrees to abide by, each and every term set forth in this Consent Order.

11. The Agency considers that the resolution of this matter under the terms set forth herein to be appropriate in light of Respondent's admitted violations, described above, and in light of the fact that the Respondent is insolvent and is currently in Receivership, as indicated in the attached Order Appointing Receiver issued by the Circuit Court for Montgomery County, Maryland on February 25, 2010.

12. Respondent has agreed to take each and every one of the following actions in exchange for a final resolution of this matter:

a. Respondent will permanently cease all collection activities in the State of Maryland, including all activities pertaining to both traditional and litigation-related collection activities, with the exception of filing motions or taking other legally permissible actions for the following limited purposes: dismissing current court cases; transferring representation of clients to other counsel; or transferring collection files to other duly licensed collection agencies; and

b. Respondent will, to the extent practicable, cooperate with all Maryland State courts in resolving any administrative or logistical matter raised by these courts which is in any way associated with Respondent's previous litigation-related collection activities in Maryland.

13. Respondent acknowledges that it has voluntarily entered into this Consent Order with full knowledge of its right to a hearing pursuant to FI § 11-518 and the Maryland Administrative Procedure Act (SG § 10-201 *et seq.*), as indicated in the attached Summary Order, and that Respondent hereby waives its right to a hearing.

14. The Parties hereto agree that this Consent Order shall be binding and enforceable in court by the Parties, shall be admissible in court, and shall be binding upon

and inure to any of the Respondent's present and future owners, directors, officers, members, partners, principals, agents, successors, and assigns.

15. The Parties hereto acknowledge that this Consent Order does not preclude the Agency from bringing actions against persons not Parties to this Consent Order.

16. The Parties hereto agree that any notices hereunder shall be effectively "delivered" when sent via overnight delivery or certified mail as follows:

a. To the Commissioner:

Commissioner of Financial Regulation
500 North Calvert Street, Suite 402
Baltimore, Maryland 21202-3651
Attention: Mark Kaufman, Deputy Commissioner

Copy to:

W. Thomas Lawrie, Assistant Attorney General
Department of Labor, Licensing, and Regulation
500 North Calvert Street, Suite 406
Baltimore, Maryland 21202-3651

b. To the Respondent:

Cheryl E. Rose, Receiver
12154 Darnestown Road, Box 623
Gaithersburg, Maryland 20878

NOW, THEREFORE, it is, by the Commissioner of Financial Regulation on behalf of the Agency, HEREBY

ORDERED that all Maryland State collection agency licenses of Respondent Mann Bracken LLP, including but not limited to License Numbers 04-4319 and 04-5306, are REVOKED effective immediately; it is further

ORDERED that Respondent shall permanently cease all collection activities in the State of Maryland effective January 11, 2010, including all activities pertaining to both

traditional and litigation-related collection activities, with the exception that Respondent may file motions or take other legally permissible actions for the following limited purposes: (1) dismissing current court cases; (2) transferring representation of clients to other counsel; or (3) transferring collection files to other duly licensed collection agencies; however, this Order in no way vitiates or otherwise limits the authority or responsibilities of the Receiver as set forth in the Order Appointing Receiver issued by the Circuit Court for Montgomery County, Maryland on February 25, 2010, at Attachment 1; and it is further

ORDERED that Respondent shall adhere to all terms of this Consent Order; and it is further

ORDERED that this Consent Order fully supersedes and replaces the Summary Order to Cease and Desist and Summary Suspension of Collection Agency Licenses issued by the Agency against the Respondent on February 25, 2010; and it is further

ORDERED that, in the event Respondent, or any of the owners, directors, officers, members, partners, employees, or agents of Respondent, violates any provision of this Consent Order, or otherwise engage in the activities which formed the basis for the violations set forth above, the Agency may, at the Agency's discretion, take any enforcement actions available under FI § 2-115 and/or BR § 7-205, as well as take any other enforcement actions as permitted by, and in accordance with, applicable State law; and that such enforcement actions could include an order to cease and desist, civil money penalties of up to \$1,000 for a first violation and up to \$5,000 for each subsequent violation, and an order to provide restitution or to take other affirmative action to correct the violation; and it is further

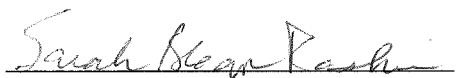
ORDERED that this matter shall be resolved in accordance with the terms of this Consent Order and the same shall be reflected among the records of the Office of the Commissioner of Financial Regulation; and it is further

ORDERED that this document shall constitute a Final Order of the Maryland State Collection Agency Licensing Board in the Office of the Commissioner of Financial Regulation, and that the Agency may consider this Consent Order in connection with, and in deciding, any action or proceeding before the Agency; and that this Consent Order may, if relevant, be admitted into evidence in any matter before the Agency.

It is so ORDERED.

IN WITNESS WHEREOF, this Consent Order is executed on the day and year first above written.

MARYLAND STATE COLLECTION
AGENCY LICENSING BOARD IN THE
OFFICE OF THE COMMISSIONER
OF FINANCIAL REGULATION



By: Sarah Bloom Raskin
Commissioner of Financial Regulation,
Chairperson, State Collection Agency
Licensing Board

MANN BRACKEN, LLP



By: Cheryl E. Rose
Receiver

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

IN RE:

*

MANN BRACKEN, LLP.

*

Case No: V 327646

Petitioner

*

v.

*

CONNELL A. LOFTUS, ESQ. et al

*

Nominal Respondents

*

ORDER APPOINTING RECEIVER

UPON CONSIDERATION of the Emergency Verified Petition to Appoint Receiver filed by the Managing Partner of the Petitioner, the owners of the Petitioner being the Nominal Respondents and having consented to the relief herein, the Petitioner being insolvent with assets that need to be collected and distributed to creditors and data, files and records that need to be collected and provided to the clients of the Petitioner, the Petitioner being in default to various landlords and creditors, to prevent spoliation and the proposed Receiver being qualified under Maryland law, service upon the Nominal Respondents being sufficient under Maryland Rule 13-104 and a Notice to Creditors being issued pursuant to Maryland Rule 13-201, and for good cause shown, it is hereby

ORDERED, pursuant to Corps. and Assns Article, Sections §§ 9A-101(i), 9A-202(b)(2), 9A-307(f), 9A-1109; 9A-801(2)(ii), (3) and (5); and 9A-802; 9A-803(a), and based upon the Exhibits attached to the Petition, that the Petition be, and it hereby is, GRANTED, and it is further

ORDERED, That at the request of the Petitioner, the Court hereby appoints Cheryl E. Rose, Esq. as Receiver over the Petitioner to undertake the duties of a receiver under the applicable laws of the State of Maryland and, to the extent determined in her best business judgment, manage, protect,

preserve, collect and liquidate the assets of the Petitioner that the receiver deems advisable, and to recover the data, files and records of the Petitioner and ultimately distribute property of the Petitioner in accordance with the authorization of this Court through the exercise of all powers permitted under Maryland law including, without limitation, the following powers;

- (a) Enter upon and take possession and control of the Petitioner;
- (b) Take and maintain possession of all documents, books, records, papers, data and accounts relating to the accounts of the Petitioner and its clients including computer files and other electronic files (in the aggregate, "Files") maintained by the Petitioner, its administrative services company, Axiant, LLC (but without violating the automatic stay protecting the property of Axiant, LLC) and the Petitioner's agents;
- (c) Pay those overdue lease obligations of Axiant and/or the Petitioner, in the Receiver's sole discretion, in order to acquire Files and to incur all reasonable expenses to move the Files into the possession of the Receiver and/or the clients of the Petitioner;
- (d) Collect checks payable to the Petitioner and accounts receivable and other assets to which the Petitioner is entitled;
- (e) Hire, if necessary, one or more of the Petitioner's employees and/or employees of the Petitioner's clients and/or former employees of Axiant at commercially reasonable rates to assist the Receiver in the performance of her duties;
- (f) Distribute, without further Court authorization, property (but not distributions on claims of debt or breach of contract or any other damages) that belongs to the clients of the Petitioner including, without limitation, Files that belong to clients and client's entitlement to incoming funds to the Petitioner, but the Petitioner shall retain such portion of the

incoming property (including, without limitation, checks from debtors of clients) to which the Petitioner is entitled or is believed to be entitled;

(g) Take and possess all financial accounts of the Petitioner, establish new financial accounts for the Petitioner (together, "Bank Accounts") and deposit payments and funds belonging to the Petitioner into such accounts, collect accounts receivable of the Petitioner and deposit the proceeds into the Bank Accounts, which (aa) Bank Accounts; and (bb) accounts receivable to which the Petitioner is entitled shall not be subject to attachment by creditors of the Petitioner or anyone else without authorization of this Court;

(h) Preserve and maintain the Petitioner's principal office for as long as needed or move the Petitioner's Files and assets to another location and to destroy any documents, records and other property in the possession of the Petitioner to protect third parties and to facilitate the administration of the Petitioner;

(i) Collect all mail being directed to the Petitioner through change of address forms and/or physical collection and relocation;

(j) Participate in lawsuits and other actions where the Petitioner is a participant , to pay insurance deductibles with respect to lawsuits against the Petition, to employ counsel to defend such lawsuits or actions, to terminate existing counsel in such lawsuits or actions, to not defend such lawsuits or actions or to consent to judgment lawsuits or actions as the Receiver determines using her business judgment;

(k) Execute and deliver, in the name of the receiver as attorney-in-fact and agent of the Petitioner, such documents, instruments, applications and certificates as are necessary or appropriate to implement and effectuate the rights and powers set forth herein including, without limitation, notices of appearances in litigation to which the Petitioner is a named party;

(l) Compromise any litigation to which the Petitioner is a party consistent with the purposes of maximizing the recovery for the Petitioner and maximizing distributions to the creditors of the Petitioner;

(m) Collect and receive the accounts receivable of the Petitioner and all entitlements to which the Petitioner is entitled from funds previously delivered to the clients of the Petitioner (which entitlement is not subject to attachment by creditors) and to institute lawsuits to collect such accounts receivable, if necessary, and participate in the Axiant Bankruptcy proceeding to collect the Petitioner's entitlement, if any, to accounts receivable from Discover and any other accounts receivable of the Petitioner that Axiant or its Estate have collected and to which the Petitioner is entitled;

(n) Pursue claims against Axiant through its bankruptcy proceeding and against any insurance policies of Axiant after modifying the automatic stay, if appropriate;

(o) Commence litigation or maintain litigation against third parties in the name of the Petitioner to recover damages owed to the Petitioner including, without limitation, any preference payment or fraudulent conveyance that would be void, voidable or fraudulent under State law or the Bankruptcy Code if made by an insolvent or debtor is to the same extent void, voidable or fraudulent as to the corporation, and the Receiver has the powers of a trustee in bankruptcy with respect to setting them aside pursuant to Md. Code Ann. Corps. and Assns, § 3-418(b) as though the Petitioner was a corporation;

(p) Employ such contractors, subcontractors, consultants, managers, brokers, or other employees, agents, independent contractors or professionals, as the Receiver may in her sole discretion deem appropriate or desirable to perform the duties required of her in this proceeding and otherwise implement and effectuate the rights and powers set forth herein;

(q) Enter such leases, whether of real or personal property, or tenancy agreements, under such terms and conditions as the Receiver may in her sole discretion deem appropriate or desirable;

(r) Seek injunctive relief from this Court and any court of competent jurisdiction to protect the assets for this Receivership Estate and the ultimate distribution to creditors;

(s) Delegate or assign any and all rights and powers set forth herein;

(t) Do any acts which the receiver in her sole discretion deems appropriate or desirable to protect the assets of the Petitioner and use such measures, legal or equitable, as the receiver may in its sole discretion deem appropriate or desirable to implement and effectuate the provisions hereof;

(u) Retain:

(i) Offit Kurman, P.A. as counsel to advise the Receiver on legal matters that arise during the receivership and to represent the Petitioner and the Receiver it in any litigation in which the Petitioner and/or the Receiver may become a party and reimburse such counsel monthly at its customary hourly rates, plus all reasonable and necessary out-of-pocket expenses, subject to the Court's approval of such counsel's application to be employed;

(ii) Brault Graham, LLC as counsel on issues involving ethical considerations and defense of the Petitioner and its principals, to the extent there is no conflict and to the extent authorized by the Receiver, and to represent the Petitioner and the Receiver it in any litigation in which the Petitioner and/or the Receiver and reimburse such counsel monthly at

its customary hourly rates, plus all reasonable and necessary out-of-pocket expenses, subject to the Court's approval of such counsel's application to be employed; and

(iii) any other professionals including legal counsel or accountants as the Receiver deems necessary and/or appropriate, subject to the Court's approval of such professionals' applications to be employed .

(v) Take such actions and require performance as is deemed necessary or desirable in the judgment of the Receiver under any contracts to which the Petitioner is a party;

(w) File a petition in bankruptcy (either Chapter 7 or Chapter 11) at any time without further authority from this Court;

(x) Take all actions in the ordinary course of business of the Petitioner;

(y) Have all other powers permitted under the laws of the State of Maryland;
and

(z) Seek clarification of the Receiver's powers, and new powers, from this Court, when appropriate.

ORDERED, That the Receiver shall post a bond in the amount of \$ 100,000.00 and file the original bond in the these proceedings within ten (10) business days from the date of the Order by this Court, which bond shall be paid by the Petitioner; and it is further

ORDERED, That the Receiver shall be compensated at an hourly rate of \$425.00 per hour and is authorized to pay a retainer from the Petitioner in the amount of Twenty-Five Thousand Dollars (\$25,000.00) and to hold such retainer, and to be paid monthly for services, subject to a final fee request approved by this Court; and it is further

ORDERED, That the Receiver file reports with this Court detailing receipts and disbursements and describing activities undertaken in her capacity as receiver pursuant to Md. Rules §§

13-501 and 13-502 (unless the Court appoints a separate auditor); and it is further

ORDERED, That the form of Notice to Creditors filed with the Petition is approved; and it is further

ORDERED, That the Receiver shall file such form of Notice to Creditors with the clerk, who shall issue the Notice. The receiver shall cause the Notice to be published according to Maryland Rule 13-201(c) and she shall file a certificate the publication has been made pursuant to such Rule; and it is further

ORDERED, that within 5 days after the clerk issues the Notice to Creditors, the Receiver shall send a copy of the Notice by first class mail, postage prepaid, to all known creditors of the debtor, and file a certificate of mailing of the notice within 5 days after the initial mailing; and it is further

ORDERED, Within 15 days after appointment, the Petitioner shall prepare and file with the clerk a schedule of property and debts under oath that provides at least the information required by Md. Rule § 13-203, but, in lieu thereof, the Petitioner may file with the clerk Bankruptcy Schedules and a Statement of Financial Affairs under oath ; it is further

ORDERED, that at the conclusion of the Receivership, the Receiver may seek authorization to abandon property and records pursuant to Md. Rule § 13-601; and it is further

ORDERED, that the Receiver may seek further guidance from this Court as to her powers and duties; and it is further

ORDERED, that the Receivership shall terminate after the approval of a final application for distribution to creditors and the distribution of all assets of the Estate.



Judge, Circuit Court for Montgomery County, Maryland

Date: 2-25-10

C:

James M. Hoffman, Esq.
William C. Davis, III, Esq.
Offit Kurman, P.A.
4800 Montgomery Lane, Suite 900
Bethesda, MD 20814

Cheryl E. Rose, Receiver
12154 Darnestown Road
Box 623
Gaithersburg, MD 20878

Connell A. Lofus, Esq.
3800 Mode Street
Fairfax, VA 22031

Scott Kramer, Esq.
10706 Tanagor Lane
Potomac, MD 20854

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IN THE MATTER OF:

MANN BRACKEN LLP

Respondent

* **BEFORE THE MARYLAND**
* **STATE COLLECTION AGENCY**
* **LICENSING BOARD IN THE**
* **OFFICE OF THE COMMISSIONER**
* **OF FINANCIAL REGULATION**

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* **DFR-FY-2010-216**
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SUMMARY ORDER TO CEASE AND DESIST AND
SUMMARY SUSPENSION OF COLLECTION AGENCY LICENSES

WHEREAS, pursuant to the Maryland Collection Agency Licensing Act (or “MCALA,” at Business Regulations Article (“BR”), § 7-101 *et seq.*, Annotated Code of Maryland), the State Collection Agency Licensing Board in the Office of the Commissioner of Financial Regulation (hereinafter the “Agency”) is responsible for licensing and regulating persons engaged in collection agency activities in the State of Maryland (the “State”), and for otherwise enforcing the provisions of MCALA and of the Maryland Consumer Debt Collection Act (“MCDCA,” at Commercial Law Article (“CL”), § 14-201 *et seq.*, Annotated Code of Maryland); and

WHEREAS, at all times relevant to the facts set forth herein, Mann Bracken, LLP, a Delaware limited liability partnership, the continuation by conversion of Mann Bracken, LLC, a Georgia limited liability company, the surviving entity of the merger of Mann Bracken, LLC (f/k/a Mann, Bracken, Layng & Knezo, LLC), Wolpoff & Abramson, LLP, and Eskanos & Adler, PC (hereinafter “Mann Bracken” or “Respondent”), located at Two Irvington Centre, 702 King Farm Boulevard, Rockville, Maryland, has been duly licensed under MCALA as a Maryland collection agency as that term is defined in BR § 7-101(c), holding several

collection agency licenses, with Respondent's licenses including, but not limited to, License Numbers 04-4319 and 04-5306; and

WHEREAS, the Agency finds grounds to allege that Respondent has engaged in, or is engaging in, or is about to engage in, acts or practices constituting violations of MCALA, the MCDCA, and the Fair Debt Collection Practices Act ("FDCPA," at 15 U.S.C. § 1692, *et seq.*), and that action under Financial Institutions Article ("FI"), § 2-115, Annotated Code of Maryland, and State Government Article ("SG"), § 10-226(c)(2), Annotated Code of Maryland, is appropriate.

NOW, THEREFORE, the Agency has determined, for the reasons set forth below, that the public welfare imperatively requires that the Maryland collection agency licenses of the Respondent be immediately suspended; and that it is in the public interest that Respondent immediately Cease and Desist from engaging, directly or indirectly, in the business of collecting consumer claims from Maryland residents, and from otherwise engaging in the collection agency business in the State of Maryland, including but not limited to engaging in any litigation-related collection activities.

1. Pursuant to BR § 7-303(b), in order to be qualified for a license as a collection agency under MCALA, the person must satisfy the Agency of the following:

that the applicant is of good moral character and has sufficient financial responsibility, business experience, and general fitness to:

- (1) engage in business as a collection agency;
- (2) warrant the belief that the business will be conducted lawfully, honestly, fairly, and efficiently; and
- (3) command the confidence of the public.

2. The grounds for suspending or revoking a Maryland collection agency license is addressed in BR § 7-308, which provides the following:

(a) *In general.*- Subject to the hearing provisions of § 7-309 of this subtitle, the Board may reprimand a licensee or suspend or revoke a license if the licensee or any owner, director, officer, member, partner, or agent of the licensee:

* * *

(3) in connection with the collection of any consumer claim:

(i) commits any fraud; or

(ii) engages in any illegal or dishonest activities;

(4) knowingly or negligently violates the Maryland Consumer Debt Collection Act;

* * *

(b) *Multiple licenses.*- If the Board finds that a ground for suspension or revocation of a license applies to more than 1 place of business that the licensee operates, the Board may act against:

(1) each license of the licensee;

* * *

3. Thus the Agency has the authority to bring actions under MCALA against persons engaged in various prohibited activities in connection with the collection of any consumer claim, including for violations of the FDCPA pursuant to BR § 7-308(a)(3)(ii) (engaging in illegal activities), and for violations of the MCDCA pursuant to BR § 7-308(a)(4). Such authority extends both to litigation-related collection activities, as well as to non-litigation (i.e. “traditional”) collection activities.

4. Pursuant to CL § 14-202 of the MCDCA, “[i]n collecting or attempting to collect an alleged debt,” a collection agency (“collector”) may not: “(8) [c]laim, attempt, or threaten to enforce a right with knowledge that the right does not exist.”

5. The FDCPA provides, in relevant part, as follows:

§ 1692e. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

* * *

(2) The false representation of--

(A) the character, amount, or legal status of any debt; or

* * *

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

* * *

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

* * *

§ 1692f. Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.

* * *

§ 1692g. Validation of debts

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing--

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or

a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector

* * *

6. On January 4, 2010, the Agency began an investigation of Respondent Mann Bracken after being contacted by consumers who complained of being unable to contact Mann Bracken in response to Respondent's previous collection activities, including consumers who were unable to make payments to the Respondent pursuant to prior payment arrangements. The Agency was also contacted by the Consumer Protection Division of the Office of the Attorney General, which had also begun receiving similar complaints indicating that Respondent Mann Bracken was no longer in business, and that Respondent had stopped cashing checks that had been sent to Respondent for collection-related matters. The Agency subsequently attempted to contact Respondent at the contact numbers which Respondent had previously provided to the Agency, but such efforts were unsuccessful as these contact numbers had all been disconnected. Based on the above, the Agency concluded that Mann Bracken had stopped all regular business operations at Two Irvington Centre, 702 King Farm Boulevard, Rockville, Maryland.

7. On January 4, 2010, the Agency became aware of a form letter dated January 1, 2010 from Scott Kramer, Esq., a partner with Respondent Mann Bracken, addressed to "Clerk of Court, Civil Division, District Court of Maryland," with no specific mailing or street address indicated, which stated the following:

To Whom It May Concern:

This letter is to advise the court that the Law Offices of Mann Bracken, LLP will be closing at the end of this month. We are working with our clients to transfer all of our cases to

new counsel as quickly as possible. However, we also anticipate that complete resolution of every single case may be a practical improbability.

We bring this to your attention because it is likely that dismissals, judgments, and substitutions of attorney may not be filed in every case before the next hearing. Therefore, we respectfully request a stay of proceedings for a period of sixty (60) to ninety (90) days or that the court dismiss the matter without prejudice. We further respectfully request that if any contested case comes up for hearing and no one appears, that the court set an order to show cause, with 60 to 90 days notice, why the case should not be dismissed, to allow time for substitution of counsel or dismissal to be filed; and that if no one appears at the order to show cause hearing, that the case be dismissed without prejudice and without sanctions.

8. Respondent's January 1, 2010 letter did not provide a listing of specific cases in which attorneys from Respondent Mann Bracken were listed as the attorneys of record for various plaintiffs in collection-related court cases. Instead, Respondent's letter puts the burden on the Maryland State district courts to determine which specific cases are impacted by this request. However, based on a prior related investigation, the Agency has reason to believe that attorneys from Respondent Mann Bracken are listed as attorneys of record in tens of thousands of active cases Maryland State district courts.

9. Additionally, during the first week in January, 2010, attorneys employed by Respondent filed motions in various cases in Maryland State district courts entitled "Plaintiff's Emergency Motion to Stay Proceedings, Cancel or Continue Hearing and Trial Dates, and For Other Relief," which stated, in part, as follows:

1) Due to the bankruptcy filing by the company that provides computer, phone, staffing, and almost all other support services to its law offices, Plaintiff's current counsel Mann Bracken LLP does not have the resources necessary to handle and pursue pending litigation, and is in the process of winding down all legal business operations.

2) As a consequence, Plaintiff is currently seeking substitute counsel to enter their appearance in the instant case and numerous other cases throughout the country.

10. The Agency again attempted to contact the Respondent at the telephone numbers listed on the correspondence from Respondent to the district courts, described above. However, such efforts were unsuccessful as all of the listed telephone numbers had been disconnected.

11. The Agency's investigation of this matter further revealed that the support services company referenced in Respondent's court filings (*see* paragraph 8, above), is Axiant, LLC (a/k/a MB Solutions LLC), a Delaware limited liability company based in Huntersville, North Carolina (hereinafter "Axiant"). The Agency's investigation also revealed the following: that Axiant was formed in 2007 through the consolidation of the non-legal operations of three large debt collection law firms – Mann Bracken, LLC, Wolpoff & Abramson, LLP, and Eskanos & Adler, PC – the same law firms whose legal operations merged into what eventually became Respondent Mann Bracken; that Axiant voluntarily filed for Chapter 11 bankruptcy protection in Delaware on November 20, 2009 in order to effectuate a sale of its assets to NCO Group, Inc. for between \$7 and \$10 million; that NCO Group notified Axiant on December 7, 2009, that it would no longer pursue the acquisition of Axiant's assets; that Axiant was subsequently unable to sell its assets to other prospective buyers; that on December 28, 2009, the federal bankruptcy court converted Axiant's bankruptcy from a Chapter 11 to a Chapter 7 liquidation; and that Axiant's bankruptcy filing lists Mann Bracken, LLP as the largest unsecured creditor of Axiant, with the value of Mann Bracken's unsecured claim against Axiant valued at \$10,561,063 (more than 10 times greater

than that of any other listed creditor). It appears likely that these events, associated with Axiant's bankruptcy, precipitated the closing of Mann Bracken.

12. Based on the foregoing, the Agency has reasonable grounds to conclude that Respondent Mann Bracken no longer satisfies the requirements to be licensed as a collection agency in Maryland pursuant to BR § 7-303(b), as its activities no longer demonstrate the financial responsibility or general fitness sufficient to engage in business as a collection agency or to warrant the belief that Respondent's business will be conducted lawfully, honestly, fairly, and efficiently. Based on its own correspondence, it appears that the Respondent does not have the resources necessary to continue the litigation-related collection proceedings that it had already commenced, that it does not have access to the electronic or paper files related to the consumer debts at issue, that it does not have the support staff or equipment necessary to engage in non-litigation related collection activities, including validating debts when requested by consumers, and that it will be unable to service current agreements with consumers on behalf of creditors or respond to any communications from consumers concerning any alleged debts.

13. The correspondence from Respondent Mann Bracken to the Maryland State courts are procedurally defective and fail to comply with the Maryland Rules of Civil Procedure in numerous ways, not the least of which is Respondent's failure to provide sufficient notice to the opposing parties (i.e. to the consumer defendants) about Respondent's proposed course of action, which focuses on requesting 60-90 stays in all active cases. These litigation-related collection activities thus constitute false or misleading representations and unfair practices in violation of 15 U.S.C. §§ 1692e and 1692f, respectively, of the FDCPA. By the same rationale, Respondents violated CL § 14-202(8) of the MCDCA.

14. Further, it is clear that Respondent's inaccessibility to the public, to the Agency, to the courts, and to opposing parties and counsel means that the Respondent will be unable to properly respond to communications or to otherwise act in good faith towards Maryland residents, as required under various provisions of the FDCPA, the MCDCA, and MCALA.¹ This applies both to Respondent's litigation-related collection activities, as well as to its traditional collection activities. For example, Respondent will be unable to comply with proper discovery requests in collection-related cases in violation of the Maryland Rules of Civil Procedure, and thus in violation of 15 U.S.C. § 1692f, and Respondent will be unable to validate debts upon receiving timely requests from Maryland consumers, in violation of 15 U.S.C. § 1692g.

15. The above-referenced knowing and willful violations of MCALA, the MCDCA, and the FDCPA in connection with the collection of consumer claims constitute grounds for revocation of the collection agency licenses of Respondent under BR §§ 7-308(a)(3)(ii), 7-308(a)(4), and 7-308(b) of MCALA, and also subjects Respondent to the imposition of fines and other non-monetary penalties under FI § 2-115(b) and to the imposition of fines, restitution, and other non-monetary penalties under MCALA.

WHEREFORE, having determined that immediate action is in the public interest, and pursuant to the aforementioned provisions of the Annotated Code of Maryland, it is, by Commissioner of Financial Regulation on behalf of the Agency, **HEREBY**

¹ Although outside the scope of the current action, it also appears that Respondent's inaccessibility to the courts and to opposing parties and counsel may put those partners and employees of the Respondent who are duly licensed to practice law in Maryland in violation of various provisions of the Maryland Lawyers' Rules of Professional Conduct, including but not limited to Rule 3.2 (Expediting litigation), Rule 3.3 (Candor Toward the Tribunal), and Rule 3.4 (Fairness to Opposing Party and Counsel).

ORDERED that, pursuant to SG § 10-226(c)(2), all collection agency licenses of Respondent Mann Bracken are SUMMARILY SUSPENDED effective immediately, and that Respondent shall immediately suspend all collection activities in the State of Maryland, which shall include but is not limited to suspending all collection-related actions in Maryland State courts and refraining from filing any further collection-related actions, with the exception that Respondent may file motions or take other legally permissible actions for the following limited purposes: dismissing current court cases; transferring representation of clients to other counsel; or transferring collection files to other duly licensed collection agencies; it is further

ORDERED that, pursuant to FI § 2-115(a), Respondent shall immediately CEASE AND DESIST from violating the aforementioned laws governing debt collection activities; and that Respondent should be assessed statutory monetary penalties for all such violations; and it is further

ORDERED that all provisions of this Summary Order to Cease and Desist and Summary Suspension of Collection Agency Licenses ("Summary Order"), including all Orders and Notices set forth herein, also apply to all unnamed owners, partners, members, officers, employees, and agents of the Respondent; and it is further

ORDERED that the Resident Agent for the Respondent shall provide a copy of this Summary Order to all unnamed owners, partners, members, officers, employees and agents of the Respondent.

FURTHERMORE,

RESPONDENT IS HEREBY NOTIFIED that, pursuant to FI § 2-115, SG § 10-226(c)(2), and BR § 7-309, Respondent is entitled to a hearing before the Agency to determine

whether this Summary Order should be vacated, modified, or entered as a final Order of the Agency; and further,

RESPONDENT IS HEREBY NOTIFIED that, pursuant to FI § 2-115, SG § 10-226(c)(2), and BR § 7-309, this Summary Order will be entered as a final Order of the Agency if Respondent does not request a hearing within 15 days of the receipt of this Summary Order; and further,

RESPONDENT IS HEREBY NOTIFIED that, pursuant to State Government Article ("SG") § 10-206.1, and in accordance with SG § 10-207(b)(4), business entities are only permitted to request a hearing, and to appear at such hearing, through an attorney authorized to practice law in Maryland at the Respondent's own expense; and further,

RESPONDENT IS HEREBY NOTIFIED that any and all requests for a hearing in this matter must conform to the requirements stated above, must be made in the form of a signed, written request, and must be submitted to the following address:

Administrator, State Collection Agency Licensing Board
Office of the Commissioner of Financial Regulation
500 North Calvert Street, Suite 402
Baltimore, Maryland 21202;


and further,

RESPONDENT IS HEREBY NOTIFIED that, pursuant to BR § 7-308, the foregoing violations provide a basis upon which the Agency may suspend or revoke Respondent Mann Bracken's Maryland collection agency licenses. Pursuant to BR § 7-205, the Agency may also issue an order requiring the Respondent to cease and desist from engaging in these violations and any further similar violations, may issue a monetary penalty of up to \$5,000, and may require Respondent to take affirmative action to correct the

violations, including providing restitution to any aggrieved consumers. Additionally, pursuant to FI § 2-115(b), as a result of a hearing, or of Respondent's failure to timely request a hearing in the manner described above, the Commissioner of Financial Regulation, may, in addition to taking any other action authorized by law, enter an Order making this Summary Order final, revoke the collection agency licenses of Respondent, impose a civil penalty against the Respondent up to \$1,000 for each violation of the above-referenced collection agency laws, issue a penalty up to \$5,000.00 for each subsequent violation of these laws, or may take any combination of the aforementioned actions against Respondent.

MARYLAND STATE COLLECTION
AGENCY LICENSING BOARD IN THE
OFFICE OF THE COMMISSIONER OF
FINANCIAL REGULATION

1/11/10
Date


By: Mark Kaufman
Deputy Commissioner of Financial
Regulation

For Sarah Bloom Raskin
Commissioner of Financial Regulation
Chairperson, State Collection Agency
Licensing Board